

## **RESOLUTION NO. 16-005**

### **A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MILPITAS RECOMMENDING APPROVAL OF THE MILPITAS LANDMARK TOWERS ADDENDUM TO CERTIFIED FINAL ENVIRONMENTAL IMPACT REPORT SCH # 2007062074 FOR THE MILPITAS LANDMARK TOWERS PROJECT; RECOMMENDING THE ADOPTION OF ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; RECOMMENDING THE ADOPTION OF A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM AND RECOMMENDING APPROVAL OF THE PROJECT**

**WHEREAS**, on August 15, 2006, TP Pham, LLC, submitted an application to the City of Milpitas to request approval of a development at 600 Barber Lane, which project would include an 18-story, 277 foot tall mixed-use building with office, retail, and residential uses, and an attached 8-level parking garage (the “TP Pham Project”); and

**WHEREAS**, the TP Pham Project proposed the redevelopment of the project site with an 18-story mixed-use building and attached 8-level parking garage; and

**WHEREAS**, pursuant to the California Environmental Quality Act (Pub. Res. Code §§ 21000, *et seq.*) (“CEQA”), and the State CEQA Guidelines (14 Cal. Code Regs. §§ 15000, *et seq.*), the City determined that a Environmental Impact Report (the “EIR”) should be prepared pursuant to CEQA in order to analyze all potential adverse environmental impacts of the TP Pham Project; and

**WHEREAS**, the City prepared and certified the Final EIR (EIR) for the TP Pham Project, consisting of comments received during the 45-day public review and comment period on the Draft EIR, written responses to those comments, and revisions and errata to the Draft EIR. For the purposes of this Resolution, the “EIR” shall refer to the Draft EIR, as revised by the Final EIR’s errata section, together with the other sections of the Final EIR; and

**WHEREAS**, the TP Pham Project was approved and adopted by the City of Milpitas (the “City”) on November 18, 2008 pursuant to the certified EIR; and

**WHEREAS**, BDK Capital, LLC, as successor in interest, has proposed revisions to the TP Pham Project under which the project site would be redeveloped with a 22-story mixed use building that includes two 19-story residential towers over three stores of parking as well as supporting retail and office uses and one to two levels of below-grade parking (the “Landmark Towers Project” or “Revised Project”); and

**WHEREAS**, the Revised Project is consistent with the City’s General Plan; and

**WHEREAS**, pursuant to CEQA, when taking subsequent discretionary actions in furtherance of a project for which an EIR has been certified, the lead agency is required to review any changed circumstances to determine whether any of the circumstances under Public

Resources Code section 21166 and State CEQA Guidelines section 15162 require additional environmental review; and

**WHEREAS**, by way preparation of an addendum, staff evaluated the Revised Project in light of the standards for subsequent environmental review outlined in Public Resources Code section 21166 and State CEQA Guidelines section 15162 by preparing an Initial Study and accompanying technical reports (the “Addendum”); and

**WHEREAS**, based on that evaluation, staff concluded that the EIR fully analyzed and mitigated, where feasible, all potentially significant environmental impacts, if any, that would result from the Revised Project, and therefore, no subsequent EIR or mitigated negative declaration is required; and

**WHEREAS**, pursuant to State CEQA Guidelines section 15164, subdivision (c), the Addendum is not required to be circulated for public review, but can be attached to the EIR; and

**WHEREAS**, on February 24, 2016, a duly noticed public hearing on the Addendum and the Revised Project was held by the Planning Commission (the “Commission”) to consider the Addendum together with the EIR, and to accept oral and written testimony from interested persons; and

**WHEREAS**, the Commission carefully considered all information pertaining to the Revised Project, including the staff report, the Addendum together with the EIR, and all of the information, evidence, and testimony presented at its public hearing; and

**WHEREAS**, all other legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, BE IT RESOLVED**, the Planning Commission of the City of Milpitas hereby finds, determines, and resolves as follows:

**SECTION 1. Recitals.** The above recitals are incorporated herein by reference.

**SECTION 2. Compliance with CEQA.** State CEQA Guidelines section 15164 requires lead agencies to prepare an addendum to a previously certified EIR if some changes or additions to the project are necessary, but none of the conditions requiring preparation of a subsequent EIR are present. The Commission has reviewed and considered the EIR and Addendum and recommends that the City Council find that those documents taken together contain a complete and accurate reporting of all of the environmental impacts associated with the Revised Project.

The Commission further recommends that the City Council find that the Addendum and administrative record have been completed in compliance with CEQA, the State CEQA Guidelines, and that the EIR and Addendum, taken together, reflect the City’s independent judgment.

**SECTION 3. Findings Regarding Environmental Impacts.** Based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the Commission recommends that the City Council find that, based on the whole record before it, none of the conditions under State CEQA Guidelines section 15162 requiring subsequent environmental review have occurred because the Revised Project:

a) will not result in substantial changes that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and

b) will not result in substantial changes with respect to the circumstances under which the Revised Project is developed that would require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of the previously identified significant effects; and

c) does not present new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR documents were certified or adopted, as applicable, showing any of the following: (i) that the modifications would have one or more significant effects not discussed in the earlier environmental documentation; (ii) that significant effects previously examined would be substantially more severe than shown in the earlier environmental documentation; (iii) that mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects, but the applicant declined to adopt such measures; or (iv) that mitigation measures or alternatives considerably different from those analyzed previously would substantially reduce one or more significant effects on the environment, but which the applicant declined to adopt.

Further, based on the substantial evidence set forth in the record, including but not limited to the EIR and the Addendum, the Commission recommends that the City Council find that the applicable mitigation measures identified in the EIR have been incorporated into a specific mitigation monitoring program for the Revised Project and would ensure that any potential environmental impacts would be reduced to less than significant levels. Those impacts which were identified in the EIR as significant and unavoidable remain significant and unavoidable. No new mitigation measures are required to mitigate environmental impacts associated with the Revised Project. Therefore, the Addendum supports the City's consideration of the Revised Project, as outlined in the State CEQA Guidelines Section 15162 and 15164.

The Commission further recommends that the City Council find that those impacts identified in the EIR as significant and unavoidable remain significant and unavoidable under the Revised Project but that the Revised Project does not increase those previously identified impacts in their severity.

**SECTION 4. Statement of Overriding Considerations.** The Commission further recommends that the City Council find that the CEQA Findings and Statements of Overriding Considerations adopted in support of the Revised Project attached as Exhibit 1 attached hereto,

and by this reference incorporated herein, remain valid and appropriate for purposes of the Revised Project.

**SECTION 5. Mitigation Monitoring Program.** The Commission recommends that the City Council re-adopt those mitigation measures identified in the EIR that are relevant to the Revised Project as detailed specifically in the Mitigation Monitoring and Reporting Program prepared for the Addendum attached as Exhibit 2, attached hereto and by this reference incorporated herein.

**SECTION 6. Recommend Approval of the Addendum.** The Commission recommends that the City Council adopt the Addendum to the EIR.

**SECTION 7. Recommend Approval of the Revised Project.** The Commission recommends that the City Council approve the Revised Project, subject to the Mitigation Monitoring and Reporting Program.

**SECTION 8. Resolution Regarding Custodian of Record.** The documents and materials that constitute the record of proceedings on which this Resolution has been based are located at the Milpitas Planning Division, located at 455 East Calaveras Boulevard, Milpitas, California 95035. The custodian for these records is the Director of Planning & Neighborhood Services. This information is provided in compliance with Public Resources Code section 21081.6.

**SECTION 9. Resolution Regarding Staff Direction:** A Notice of Determination shall be filed with the County of Santa Clara and the State Clearinghouse within 5 (five) working days of the City Council's adoption of the Commission's recommendations and approval of the Revised Project.

**PASSED AND ADOPTED** at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016.

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Chair

TO WIT:

**I HEREBY CERTIFY** that the following resolution was duly adopted at a regular meeting of the Planning Commission of the City of Milpitas on February 24, 2016, and carried by the following roll call vote:

<b>COMMISSIONER</b>	<b>AYES</b>	<b>NOES</b>	<b>ABSENT</b>	<b>ABSTAIN</b>
Sudhir Mandal, Chair				
Rajeev Madnawat				
Lawrence Ciardella				
Gurdev Sandhu				
Hon Lien				
Ray Maglalang				
Demetress Morris				
Zeya Mohsin (alternate)				

Attachments:

**Exhibit 1 - CEQA Findings and Statement of Overriding Considerations**

**Exhibit 2 - Mitigation Monitoring and Reporting Program**